

REMARKS/ARGUMENTS

Claims 12, 14 to 21, 24 to 28, 30 and 32 are pending in the application. Applicants respectfully request reconsideration of the rejections of record in view of the following remarks.

Alleged Obviousness

Claims 12, 14 to 21, 24 to 28, 30, and 32 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PCT Application No. WO 97/38707 (hereinafter "the Aebischer application") in view of U.S. Patent No. 5,854,205 (hereinafter "the O'Reilly patent") and U.S. Patent No. 5,459,054 (hereinafter "the Skjak-Braek patent"). Applicants respectfully traverse the rejection because the Office Action fails to provide objective evidence that those of ordinary skill in the art would have been motivated to combine the teachings of the cited references.

The Office Action fails to identify any credible evidence of a motivation, teaching, or suggestion that would have led persons of ordinary skill in the art *who did not have the benefit of the hindsight provided by Applicant's disclosure* to combine the teachings of the Aebischer application with those of the O'Reilly patent and the Skjak-Braek patent. Although the Office Action asserts that concerns over immunostimulation would have motivated those of ordinary skill in the art to encapsulate the producer cells alleged to be disclosed in the Aebischer application with the alginate disclosed in the Skjak-Braek patent, rather than the encapsulation devices disclosed in the Aebischer application (Office Action at pages 4-5), those of ordinary skill would not have been so motivated.

There is no reason to believe that those of ordinary skill having the Aebischer application before them would have been concerned with the immunostimulatory effect

engendered by the encapsulated cells that the application discloses, much less sufficiently concerned to modify the application's disclosure in a way that would have produced any claimed inventions. Indeed, the Aebischer application describes the encapsulation of cells in an *immunoisulatory* device, and states that the "[t]ypes of immunological attack which can be prevented or minimized by the use of the instant vehicle include attack by macrophages, neutrophils, cellular immune responses (e.g. natural killer cells and antibody-dependent T cell-mediated cytotoxicity (ADCC), and humoral response (e.g., antibody-dependent, complement-mediated cytotoxicity.)" (*id.*, page 16, lines 20 to 24). This teaching is cumulative to the Skjak-Braek patent's disclosure relating to encapsulation of cells with alginate of a high G concentration to protect from immunological cell rejection upon implantation (Skjak-Braek patent at column 4, lines 1 to 12). Since the Aebischer application describes encapsulation of cells using means that prevent or reduce an immune response against the cells following implantation, those of ordinary skill in the art would not have been motivated by such concerns to modify its teachings. Applicants accordingly, respectfully request withdrawal of the rejection.

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PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116

Conclusion

Applicants believe that the foregoing constitutes a complete and full response to the Office Action of record. Accordingly, an early and favorable Action is respectfully requested.

Respectfully submitted,

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